

# Minimum Licensing Standards

for

## Child Welfare Agencies



**Child Welfare Agency Review Board  
&**

**Arkansas Department of Health and Human Services  
Division of Children and Family Services**

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# Introduction

“The Child Welfare Licensing Act,” Ark. Code Ann. **9-28-401** et. seq., (the Act) is the legal authority under which the Child Welfare Agency Review Board prescribes minimum licensing standards for child welfare agencies, as defined under the statute.

## Child Welfare Agency Review Board

The Child Welfare Agency Review Board shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home. The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

The board shall promulgate rules and regulations that:

- (1) Promote the health, safety, and welfare of children in the care of a child welfare agency;
- (2) Promote safe and healthy physical facilities;
- (3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;
- (4) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;
- (5) Ensure adequate and healthy food service;
- (6) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under the Child Welfare Agency Licensing Act, or of child maltreatment laws;
- (7) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(8) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(9) Require the compilation of reports and making those reports available to the division when the board determines it is necessary for compliance determination or data compilation;

(10) Ensure that a child placement agency:

(a) Treats clients seeking or receiving services in a professional manner, as defined by regulations promulgated pursuant to this act; and

(b) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Health and Human Services where complaints can be lodged.

(11) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program.

The Arkansas Administrative Procedure Act, Ark. Code Ann. **25-15-201** et seq., shall apply to all proceedings brought to the Board pursuant to this Act. The Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence shall also apply to adverse action hearings.

The Department of Health and Human Services, Division of Children and Family Services is designated as the governmental agency charged with the enforcement of the provisions of the Act. Only the Division, licensees, and applicants for a license shall have standing before the Board, except where otherwise provided by law.

The Department of Health and Human Services shall maintain a website accessible to the general public that contains information on child placement agencies. The website shall contain:

1. The name, phone number and address of all child placement agencies licensed by the board;
2. Information on each child placement agency, specifically if the license is in good standing, and if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the Child Welfare Agency Review Board; and
3. The name and contact information for a person in the Child Welfare Agency Licensing Unit of the Department of Health and Human Services who handles complaints about child placement agencies.

# Agencies Requiring Licensing

Any person, organization, corporation, partnership, voluntary association or other entity which provides care, training, education, custody, or supervision for a total of six (6) or more unrelated minors on a twenty-four (24) hour basis, and is not otherwise exempt by the Act, requires a license.

Any person, organization, corporation, partnership, voluntary association, or other entity which places, plans for or assists in the placement of any unrelated minor for care in a foster home, adoptive home, or residential facility, and is not otherwise exempt by the Act, requires a license.

The Board shall take any action necessary to prohibit any person, partnership, group, corporation, organization or association not licensed or exempted from licensure from advertising, placing, planning for, or assisting in the placement of any unrelated minor for the purposes of adoption or for care in a foster home. The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

The Board may impose a civil penalty upon any person, partnership, group, corporation, organization or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas that advertises, places, plans for or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home. The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

## Types of Licenses

### RESIDENTIAL CHILD CARE FACILITY

Any child welfare agency that provides care, training, education, custody or supervision on a twenty-four (24) hour basis for six (6) or more unrelated minors.

### EMERGENCY RESIDENTIAL CHILD CARE FACILITY

Any child welfare agency that provides twenty-four (24) hour custodial care for six (6) or more unrelated children on an emergency basis, not to exceed ninety (90) days. All regular residential agencies qualify as emergency shelters. Any child admitted as an emergency placement shall be designated as such and must be discharged within ninety (90) days. The child may be discharged to the same facility, but the child's record must reflect the date the child was admitted into regular residential care.

**PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY**

A residential child care facility in a non-hospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry. It is for children who are emotionally disturbed and in need of daily nursing services, physician's supervision and residential care, but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital.

**SEXUAL OFFENDER PROGRAM**

A treatment program that offers a specific and specialized therapeutic program for juvenile sexual offenders. A licensed sexual offender program may be in a residential childcare facility, a therapeutic foster care home, or a psychiatric residential treatment facility. A sexual offender is described as a person who has committed one or more confirmed acts of sexual abuse/misconduct, which constitutes the predominant need for specialized treatment services.

**CHILD PLACEMENT AGENCY - ADOPTION**

A child welfare agency which places, plans for or assists in the placement of an unrelated minor in a household of one (1) or more persons which has been approved to accept a child for adoption.

**CHILD PLACEMENT AGENCY – FOSTER CARE**

A child welfare agency which places, plans for or assists in the placement of an unrelated minor in a private residence of one (1) or more family members for care and supervision on a twenty-four (24) hour basis.

**CHILD PLACEMENT AGENCY – THERAPEUTIC FOSTER CARE**

Any child welfare agency that places, plans for or assists in the placement of an unrelated minor in a therapeutic foster home. Therapeutic foster care is intensive therapeutic care for children provided in specially trained family homes supported by licensed mental health professionals. A therapeutic foster care program is a family-based services delivery approach providing individualized treatment for children, youth, and their families. Treatment is delivered through an integrated constellation of services with key interventions and supports provided by therapeutic foster parents who are trained, supervised, and supported by qualified program staff. Therapeutic foster care services shall be provided in a separately identified program of a larger agency or be provided by an independent agency.

An agency may be licensed for any or all types of licenses, depending on the types of services it provides.

## License Status

The Board shall issue all licenses to child welfare agencies upon majority vote of members present during each properly called board meeting at which a quorum is present when the meeting is called to order. The Board shall have the power to deny an application to operate a child welfare agency or to revoke or suspend a previously issued license to operate a child welfare agency. The Board may also issue letters of reprimand or caution to a child welfare agency. Any denial of application or revocation or suspension of a license shall be effective when made.

### NEW PROVISIONAL

Issued to a newly licensed agency for a one (1) year period, to give the agency time to demonstrate substantial compliance with minimum licensing standards.

### PROVISIONAL

Issued to an agency that has failed to maintain compliance with minimum licensing standards, but the Board believes that compliance can be restored and subsequently maintained. This license may be issued for up to one (1) year, at the discretion of the Board.

### REGULAR

Issued either to a previously licensed agency that continues to meet all minimum licensing standards, or issued to an agency that meets all essential standards and has a favorable compliance history, which predicts full compliance with all standards within a reasonable time. A regular license shall remain open and effective until closed at the request of the agency or Board action.

### SUSPENDED

Board action taken when an agency has failed to maintain compliance with minimum licensing standards, but the deficiencies do not warrant revocation. A license may not be suspended for longer than one (1) year at a time. The Board may issue a provisional or regular license when compliance is restored.

### CLOSED

Board action taken when the agency requests that the license be closed.

REVOKED

Board action taken when an agency has failed to maintain compliance with minimum licensing standards. The agency may not apply for a new license for at least one (1) year from the date of revocation.

STATUS CHANGE

An altered license will be issued any time there is a change in the agency's program that affects the license type, status, capacity, or a name change.

A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it shall be transferable from one holder of the license to another or from one place to another.

Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures must be followed:

(1) The seller shall notify the division of the sale at least thirty days prior to the completed sale

(2) The seller shall remain responsible for the operation of the child welfare agency until such time as the agency is closed or a license is issued to the buyer.

(3) The seller shall remain liable for all penalties assessed against the child welfare agency which are imposed for violations or deficiencies occurring before the transfer of a license to the buyer

(4) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(5) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission shall apply in their entirety to the new owner of the Child Welfare Agency.

INFORMING CLIENTS OF LICENSE STATUS CHANGES – Child Placement Agencies

The Child Placement Agency shall inform current and potential clients if their license has been suspended or revoked, or if they have voluntarily surrendered their license.



## How To Apply The Standards

Section 100 of the Minimum Licensing Standards for Child Welfare Agencies applies to all agencies that engage in residential care or placement of children into residential facilities, foster homes, or adoptive homes. Subsequent sections apply to specific types of residential facilities or child placement agencies. Not all sections of the Minimum Licensing Standards for Child Welfare Agencies apply to a specific license. Each agency must meet the license requirements of its agency category.

## Alternative Compliance

The Board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under the Child Welfare Agency Licensing Act, but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible and violations of those terms shall constitute a rule violation.

# 100. General Requirements

*The standards in Section 100 apply to all agencies.*

## 100.1 Applications & Licensing Procedure

1. The owner or board shall prepare and furnish an application for a license that contains the following minimum information:
  - a. A completed application form;
  - b. A letter from the agency's board authorizing a person to sign the application;
  - c. A copy of the Articles of Incorporation, bylaws, and current board roster, if applicable, including names and addresses of officers. Out of state agencies shall have legal authorization from the Arkansas Secretary of State to do business in Arkansas.
  - d. A personnel list with verifications of qualifications and experience;
  - e. Substantiation of the agency's financial soundness (e.g., an annual budget showing projected income and expenses);
  - f. A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care;
  - g. Fire inspection, Arkansas Department of Health inspection, zoning approval for residential childcare.
2. The agency or facility shall furnish the Licensing Specialist with any additional information reasonably needed to verify compliance with these standards and to make a recommendation regarding the granting of a license.
3. Once a completed application has been received, the Division shall complete a recommendation within ninety days. If a recommendation is not made within ninety days, the applicant may appear before the CWARB to request a license.

## 100.2 Monitoring & Corrective Action

1. The Licensing Specialist shall conduct monitoring visits to ensure continued compliance with licensing standards.
2. The Licensing Specialist shall investigate complaints of alleged violation of licensing standards, and may participate in investigations of alleged child maltreatment.
3. Monitoring visits may be scheduled or unscheduled, at the discretion of the Licensing Specialist.

4. The frequency of monitoring visits shall be at the discretion of the Licensing Unit.
5. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to advise the Licensing Specialist during initial approval or upon monitoring visits. This team may include a professional in the appropriate field.
6. Upon finding any deficiencies with licensing standards, the Licensing Specialist shall issue to the agency a corrective action notice, which shall state:
  - a. A factual description of the conditions that constitute a violation of the standard;
  - b. The specific law or standard violated;
  - c. A reasonable time frame within which the violation must be corrected;
  - d. Agreement regarding the corrective action and time frame shall be shown by signature of the agency representative and the Licensing Specialist.
7. The agency shall provide a written corrective action plan when requested to do so by the Licensing Specialist in a corrective action notice.
8. The agency shall establish and follow written procedures for reporting allegations of child maltreatment according to Arkansas law, including notification of the Child Maltreatment Hotline.
9. The agency shall take steps to prevent harm or retaliation against the child while an allegation of child maltreatment is being investigated.
10. The agency shall ensure that the staff member accused in a maltreatment complaint does not have unsupervised contact with children during the investigation, unless an alternate plan is agreed upon between the agency, the Licensing Unit, and the custodian of the child.
11. The agency and all staff shall cooperate fully with investigators during a child maltreatment investigation.
12. The agency shall notify the Licensing Unit of critical incidents, such as serious injuries requiring emergency medical treatment, arrests, suicide attempts, or deaths.

### **100.3 Organization & Administration**

1. The purpose and mission of the agency, including treatment philosophy, services provided, and characteristics of children it is designed to serve, shall be stated in writing.
2. The following policies of the agency shall be current and available to all employees of the agency and the Licensing Specialist:
  - a. Personnel policies;
  - b. Volunteer/Student intern policy;
  - c. Admission policy;

- d.** Intake policy;
  - e.** Behavior Management policy;
  - f.** Crisis Management policy;
  - g.** Child Maltreatment/Mandated Reporter policy;
  - h.** Child Exploitation policy;
  - i.** Visitation policy;
  - j.** Family Therapy/Therapeutic Pass policy (Psychiatric only);
  - k.** Admission Health Assessments policy ((Psychiatric only);
  - l.** Public Safety policy (Sexual Offender Programs policy only);
  - m.** Target Population, Admission/Exclusion Criteria, and Discharge Criteria policy (Sexual Offender Programs only)
  - n.** Emergency, Respite Care, and Disruption policy (Placement Agencies only);
  - o.** Exclusion Policy (Adoption Agencies only).
- 3.** The child placement agency shall obtain a license before placing, or planning for the placement of, children in a foster home, adoptive home, or institution. The residential facility shall obtain a license before receiving six (6) or more children who are unrelated to the caregiver for care on a twenty-four hour basis.
  - 4.** The agency shall be legally authorized to conduct business in Arkansas by state law and local ordinance.
  - 5.** The agency shall meet all federal, state, and local laws and ordinances that apply to child welfare agencies and to the proper care of children in such facilities.
  - 6.** The agency shall have one designated person or entity that assumes responsibility for lawful operation of the agency.
  - 7.** All agencies shall maintain a current organizational chart showing the administrative structure of the organization.
  - 8.** All agencies applying for an Arkansas license shall provide proof that they are licensed in good standing in their home state, if applicable, and are in good standing in all other states where they are licensed. If an agency is being disciplined or sanctioned in another jurisdiction, the board must be notified.
  - 9.** All agencies licensed in Arkansas after January 18, 2002 shall have an office in Arkansas.
  - 10.** All agencies licensed in Arkansas shall maintain all required files for licensing review as needed. They may choose to:
    - a.** Maintain these files in their office in Arkansas; or
    - b.** Arrange to provide the required files to the licensing staff; or
    - c.** Pay reasonable expenses for licensing staff to travel to their home office.

11. All agencies licensed in Arkansas shall have a qualified person on call to supervise emergency services. [Pursuant to 100.6 – 100.8]
12. All agencies licensed in Arkansas shall be bonded, maintain liability insurance, or be self-insured.

## **100.4 Central Registry & Criminal Record Checks**

1. The following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his state of residence, if available, and any state of residence in which the person has lived for the past six (6) years, and in the person's state of employment, if different, for reports of child maltreatment:
  - a. Employees having direct and unsupervised contact with children.
  - b. Volunteers/student interns/visiting resources having direct and unsupervised contact with children.
  - c. Foster parents, house parents, and each member of the household age ten (10) years and older.
  - d. Adoptive parents, and each member of the household age ten (10) years and older, residing in Arkansas. Adoptive parents and each member of the household age ten (10) years and older residing out of state shall provide Child Maltreatment Central Registry Checks from their state of residence, if available.
  - e. Owners having direct and unsupervised contact with children.
  - f. Members of the agency's board of directors having direct and unsupervised contact with children.
2. Persons required to have the Child Maltreatment Central Registry Check shall repeat the check every two (2) years, except that adoptive parents, and each member of the household age ten (10) years and older, shall repeat the check, if available, every year until the adoption decree has been issued.
3. Any person found to have a record of child maltreatment shall be reviewed by the owner or administrator of the agency, in consultation with the Child Welfare Agency Review Board or its designee, to determine corrective action. Corrective action may include, but is not limited to, counseling, training, probationary employment, non-selection for employment, or termination.
4. The following persons in a Child Welfare Agency shall be checked with the Identification Bureau of the Arkansas State Police for convictions of offenses listed in Arkansas Code Annotated **9-28-409**:
  - a. Employees having direct and unsupervised contact with children.
  - b. Volunteers/student interns/visiting resources having direct and unsupervised contact with children.

- c. Foster parents, house parents, and each member of the household age sixteen (16) years and older. The foster parents shall certify that household members ages fifteen (15) years and under do not have criminal records.
  - d. Adoptive parents and each member of the household age sixteen (16) years and older residing in Arkansas. Adoptive parents and each member of the household age sixteen (16) years and older residing out of state shall provide State Police Criminal Record Checks from their state of residence, if available. The out of state adoptive families do not need to do an Arkansas State Police Check if they have never resided in Arkansas.
  - e. Owners having direct and unsupervised contact with children.
  - f. Members of the agency's board of directors having direct and unsupervised contact with children.
- 5. If any person (listed in #4 above) has not resided in Arkansas continuously for the past six (6) years, a record check with the Federal Bureau of Investigation shall be completed. (These record checks are not required for international adoptions as background checks are already part of INS requirements for adoption.) Adoptive parents residing outside of Arkansas who have lived in their state of residence continuously for the past six (6) years do not need to do the FBI checks.
  - 6. Any person required to have an Arkansas State Police Record Check shall repeat the check every five (5) years, except adoptive parents after the adoption decree has been issued. Adoptive parents shall have State Police Checks and Child Maltreatment Central Registry Checks, if available in their state, dated within one (1) year prior to placement.
  - 7. Child Maltreatment Central Registry Checks and Arkansas State Police/FBI Criminal Record Checks shall be initiated within ten (10) days of employment.
  - 8. No person guilty of an excluded criminal offense pursuant to **901-28-409(e)(1)** shall be permitted to have direct and unsupervised contact with children, except as provided in the statute.
  - 9. A residential facility, emergency residential facility, or psychiatric residential facility shall immediately notify the Licensing Unit when an employee (listed in #4 above) is found to have a record of an excluded criminal offense.

## 100.5 General Personnel Requirements

***All personnel employed on or after April 12, 1999 shall meet the following requirements:***

- 1. The Administrator, Social Services Director, and each caseworker of a child welfare agency shall have twenty-four (24) hours of job-related continuing education each year.
- 2. Written personnel policies shall be current and available for review by agency staff and the Licensing Specialist.

3. The agency shall maintain a personnel file for each employee, which shall include
  - a. A resume or application;
  - b. Verifications of qualifications;
  - c. Documentation of required annual training
  - d. Criminal Record Check and Child Maltreatment Central Registry Check information as required by law;
  - e. Documentation that employees working directly with children are informed that they are mandated reporters of suspected child maltreatment and are provided the information needed to make a report;
  - f. A functional job description;
  - g. At least three (3) positive personal references.

## 100.6 Administrator

1. Each agency shall have an Administrator who shall be responsible for the general management of the agency.
2. The Administrator shall possess at least one of the following qualifications **[Only “a” and “b” meet requirements for Psychiatric facilities]**:
  - a. A doctorate degree;
  - b. A master’s degree in a human services field (child development, psychology, sociology, social work, guidance and counseling, divinity, education) or in administration, business, or a related field;
  - c. A bachelor’s degree in a human services field or in administration, business, or a related field, and at least two years of work experience in a human services agency.

## 100.7 Social Services Director

1. The agency shall have a Social Services Director who shall supervise child placement activities and/or casework services by the agency.
2. The Social Services Director shall possess at least one of the following qualifications:
  - a. A master’s degree or higher in a human services field (child development, psychology, sociology, social work, counseling and guidance, divinity, education);
  - b. A bachelor’s degree in a human services field and two (2) years or work experience in a child welfare agency.
3. Anyone permitted to supervise child placement or casework services shall meet the qualifications for Social Services Director.

## **100.8 Caseworkers**

1. Each agency shall assign caseworkers who are responsible for doing assessment, case planning, and casework services for children and families.
2. Caseworkers shall have a bachelor's degree in a human services field, or a bachelor's degree and two (2) years work experience in a human services field.
3. A caseworker shall not have more than twenty-five (25) cases at a time.

## **100.9 Volunteers & Student Interns**

1. Each agency shall have a policy clearly defining the qualifications, duties, and supervision of volunteers and student interns.
2. Volunteers and interns shall be supervised by an appropriate and designated staff person.
3. A volunteer or intern who works unsupervised shall meet the qualifications required for a paid employee in that position.

## **100.10 Visiting Resources**

A visiting resource is defined as a non-related situation in which a visit occurs away from the facility, excluding normal age-appropriate activities such as overnight visit with friends, extra-curricular activities, church activities, or short-term summer camps. Records shall include the following:

1. Documentation and narrative of at least one (1) home visit for evaluation purposes prior to visitation occurring.
2. At least three (3) character references.
3. Documentation of State Police Criminal Record Checks and Child Maltreatment Central Registry Checks, if available.
4. All members of the household older than twelve (12) years shall receive a Mantoux skin test for tuberculosis every three (3) years, as long as test results remain negative. Household members with a positive skin test must provide documentation from a physician every two years certifying that they are free from communicable tuberculosis.
5. Narrative of continuing contact and an annual review, in person, of the visiting resource.



## **100.11 Admission**

1. Each child welfare agency shall establish written criteria for admitting/excluding children.
2. The agency shall not admit any child for whom the agency cannot provide adequate care.
3. Each child shall have a medical exam no more than sixty days before admission, or scheduled within one (1) week of admission.
4. Age-appropriate immunizations shall be current or scheduled within one (1) week of admission.
5. The child placement agency shall obtain written authority from the parent(s), guardian(s), or court before placement, or within 72 hours if an emergency placement.
6. The residential childcare facility shall attempt, and shall document their attempts, to obtain written verification of the placing agents authority to place the child at the time of admission, or within five (5) working days if an emergency placement.
7. The agency shall obtain written authority for medical care for the child from the parent(s), guardian(s), or court at the time of placement, or within 72 hours in an emergency placement.
8. The agency shall comply with the Interstate Compact on the Placement of Children when placing/admitting children from outside Arkansas.

## **100.12 Intake & Assessment**

1. An intake study shall be completed on each child in care within ten (10) working days after admission, except for adoption agencies.
2. The intake study shall include:
  - a. Demographic information on the child and parent(s), including name, address, birth date, sex, race, and religious preference;
  - b. A factual description of the circumstances requiring placement;
  - c. A brief social history of the family;
  - d. The child's current legal status/custody;
  - e. Any history of previous placements outside the family;
  - f. An assessment of services needed to ensure the health and welfare of the child, including medical history and psychological history.

### 100.13 Case Planning

1. There shall be a case plan for each child placed by a child placement agency or received for care by a residential facility. The plan shall address the child's needs as identified in the intake study.
2. If the agency is providing casework services to the child's parents, its plan shall be included in the child's case record.
3. If placed by a licensed or exempt agency, the case plan shall be developed before placement, except an emergency placement.
4. If the child is received into residential care without a case plan, the case plan shall be developed within thirty days after placement.
5. The case plan shall be developed after a staffing. Every effort shall be made to include the parent(s), foster parents (if applicable), facility staff (if applicable), caseworker, social worker or probation officer (if applicable), and the child.
6. The child's case plan shall contain, at the minimum:
  - a. Specific and measurable goals for the child;
  - b. Specific tasks for accomplishing the case plan goals
  - c. Time frames for completing tasks and goals;
  - d. Designation of the person responsible for completing each task
  - e. Visitation schedule between child and parent(s), if appropriate including arrangements for transportation and supervision of visits;
  - f. A plan to ensure that the child's educational needs are met according to state law
  - g. Date of next review of the case plan, if applicable;
  - h. Special treatment issues (e.g., psychotropic medications, sexual misconduct, neurological disorders) shall be identified, with a statement of how the special needs shall be met.
7. A copy of the case plan shall be made available to the parent(s), guardian(s), court, or other agencies involved in case plan services delivery.
8. The case plan shall be reviewed at least semi-annually, and goals shall be updated to reflect the child's growth, development, and progress. Psychiatric case plans shall be reviewed monthly. Sex Offender case plans shall be reviewed quarterly.
9. There shall be a specific caseworker responsible for coordinating the delivery of the case plan.
10. If independence is a goal, the case plan shall include training in independent living skills.

## 100.14 Children's Records

The agency shall keep a confidential case record for each child that includes the following:

1. Demographic information;
2. A complete intake study;
3. Consents, including consent for medical care and authority to place the child;
4. Interstate Compact information, if applicable;
5. Case plans and case plan reviews
6. Copies of legal documents (e.g., birth certificate, social security card, court orders);
7. Physical exams and immunization records;
8. Psychological reports;
9. Educational reports;
10. Disciplinary and incident reports (may be kept in a separate file)
11. Progress reports
12. Records of visitation and family contacts;
13. Documentation of casework services and client contact, current to within one (1) month of occurrence;
14. Discharge summary.

## 100.15 Behavior Management

1. The agency shall have a written discipline policy that is consistently followed.
2. Discipline shall be directed toward teaching the child acceptable behavior and self-control.
3. Discipline shall be appropriate to the child's age, development, and history.
4. The following forms of discipline shall not be used:
  - a. Denial of meals, sleep, shelter, essential clothing, or case plan activities;
  - b. Denial of parental visits or regular phone/mail contact with family. Non-disciplinary case planning issues are excepted
  - c. Lewd or obscene language;
  - d. Derogatory comments about the child, the child's family, race, or gender;
  - e. Restriction to a room for more than a short period of time without periodic observation;
  - f. Locked isolation (psychiatric facilities excepted);

- g.** Physical injury or threat of bodily harm;
  - h.** Humiliating or degrading action;
  - i.** Extremely strenuous work or exercise;
  - j.** Mechanical/chemical restraints (psychiatric facilities excepted);
- 5.** Physical restraint shall be initiated only by trained staff, and only to prevent injury to the child, other people or property, and shall not be initiated solely as a form of discipline.
- 6.** A child shall not be allowed to administer discipline, except teen parents may discipline their own children.
- 7.** Searches of a child or a child's personal property shall be for reasons limited to safety and security of children and staff, or in cases of suspected theft.
- 8.** Any searches requiring removal of clothing shall be done in privacy, and except in foster homes, shall be witnessed by two (2) staff of the same sex as the child.

## **100.16 Exploitation of Children**

- 1.** The facility shall not require a child to acknowledge dependency, destitution, or neglect or to make public statements about his/her background.
- 2.** The facility shall not use or allow to be used, any reports, pictures, or any other information from which a child can be identified, except under the following conditions:
  - a.** The child and the parent/guardian sign a consent form that describes the purposes for which the identification is being made;
  - b.** The signed consent shall say in which publication or broadcast the identification will appear;
  - c.** The parent/guardian and child shall be informed that the consent may be withdrawn.
- 3.** All information regarding children and their families shall be kept strictly confidential and may be released without the consent of the child or parent/guardian, only to authorized persons or agencies.

## **100.17 Ethical Standards**

The Arkansas Child Welfare Agency Review Board sets forth this section as a Code of Ethics/Standards for Practice for all child placement agencies within the State of Arkansas that place children in adoptive or foster homes pursuant to A.C.A. 9-28-401. Violations shall

Violations shall be grounds for disciplinary action.

1. **Confidentiality** In providing services, a child placement agency must safeguard information given by clients. Except when required by law or judicial order, a child placement agency must obtain the client's informed written consent before releasing confidential information. If the client is a minor, then the written consent shall be made with the minor and their legal representative or guardian.
2. **Responsibility** A child placement agency must provide a clear, written description of what the client may expect in the way of services, reports, risks, fees, billing, estimated schedules and grievance procedures.
3. **Misrepresentation** A child placement agency must not misrepresent its program services or experience.
4. **Client Relationships** Relationships with clients must not be exploited by the child placement agency staff for personal gain.

Unprofessional conduct in the practice of child placement activities shall include, but not limited to the following:

1. Violations of the Child Welfare Agency Licensing Act or the Regulations published by the Child Welfare Agency Review Board.
2. Permitting, Aiding, or abetting an unlicensed person to perform activities requiring a license.
3. Misrepresenting type or status of education, training, expertise, licensure, or professional affiliations.
4. Failing to maintain confidentiality, except as otherwise required or permitted by law, or all information that has been received from a client in confidence during the course of services.
5. Violating the ethical standards adopted by the Board.
6. Failing to report to the Board any disciplinary action taken against the child placement agency by another licensing jurisdiction or failing to report to the board the surrender of a license or authorization to practice child placement activities in another jurisdiction.
7. Failing to comply with any stipulation or agreement with the Board involving probation or a settlement of any disciplinary matters.
8. Engaging in sexual behavior with a client.

**100.18 Discharge**

1. The agency shall discharge a child when the case planning team decides that the child is no longer in need of services or can no longer benefit from services provided by the agency.
2. Except in the case of an emergency discharge, the discharge shall be planned by appropriate agency staff, parent(s), child, and any agency that will offer post-discharge services.
3. The agency may discharge a child on an emergency basis if failure to do so could result in harm to the child, other persons, or significant property damage.
4. Each child shall be discharged to the custody of a responsible party.
5. The agency shall promptly notify the Arkansas office of the Interstate Compact on the Placement of Children upon discharging a child from outside Arkansas.
6. The agency shall complete a discharge summary on each child and provide a copy of it to the child's custodian.

## 200. Child Placement Agencies: Foster Care

*In addition to all standards in Section 100, the following standards shall be met:*

### 200.1 Selection of Foster Home

1. The agency shall select the home that is in the best interest of the child, the least restrictive possible, and is matched to the child's physical and emotional needs. The placement decision shall be based on an individual assessment of the child's needs.
2. The agency shall document reasons if a child is placed in a foster home more than a two (2) hour drive from the parent(s) home. This does not apply to children in short term foster care awaiting adoptive placement.
3. The agency shall place children only in approved foster homes.
4. Foster homes shall not have more than five unrelated minor children in care. The foster home may care for more children if they are related to the caregiver. The foster home shall not have more than eight children in their home, including their own children.
5. Foster homes shall not have more than two (2) children under the age of two (2) years, including the foster parent's own children.
6. At least one parent in the foster home shall be able to communicate effectively in the language of the child in care. This does not apply to foster parents for infants or short term emergency placements.
7. The agency shall not place children in foster homes approved by another agency without written approval of the other agency.
8. Foster homes shall not also operate as Day Care Family Homes.
9. No children shall be placed in the foster home unless there is an approval letter for the foster home in the foster home record from the Licensing Agency.
10. A provisional foster home means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Health and Human Services or any Licensed Agency, on a relative of a child in the custody of the division /or agency after the division or agency:
  - (A) Conducts a health and safety check, including a central registry check and a criminal background check or check with local law enforcement on the relative's home; and
  - (B) Performs a visual inspection of the home of the relative to verify that the relative will meet the standards for opening a regular foster home.

## **200.2 Approval of Foster Homes**

1. The agency shall complete a home study for each foster home applicant to learn if the applicant complies with the Foster Home Standards (see Section 200.3).
2. The agency shall conduct at least two (2) visits in person with the foster parent applicants, including at least one (1) visit to the home, and shall interview every age-appropriate member of the household.
3. At least three (3) confidential personal references must be obtained on the foster family.
4. Each member of the foster family shall have a physical exam within six (6) months before the initial approval.
5. The agency shall ensure that the foster parents receive at least 10 hours of pre-service training (excluding CPR and First Aid) before placing a child in the home.
6. In addition to the required hours of pre-service training, the foster parent(s) shall have current CPR and First Aid training. A foster home shall not have a child placed in their care until they have received the CPR and First Aid training.
7. If the agency approves the foster parent(s), the agency shall specify in the home study the number, age, sex, and other characteristics of children for whom the home is approved to provide care. For each foster parent, an individualized training plan shall be developed taking into consideration the age and characteristics of children for whom the foster parent has expressed preferences.
8. Foster parents shall provide documentation that they carry homeowner's or renter's insurance and general liability insurance.

## **200.3 Personal Qualifications/Home Study**

1. In a two-parent home, the husband and wife shall be joint applicants, shall each participate in the approval process, and shall provide verification that they have been married at least two (2) years.
2. The stability of the foster family shall be evaluated and determined to be appropriate.
3. Foster parents shall be at least twenty-one (21) years of age.
4. All members of the household older than twelve (12) years shall receive a Mantoux skin test for tuberculosis every three (3) years, as long as test results remain negative. Household members with a positive skin test must provide documentation from a physician every two years certifying that they are free from communicable tuberculosis.
5. All preschool age children in the household shall have proof of current health immunizations in accordance with the Periodicity Schedule recommended by the American Academy of Pediatrics and the Centers for Disease Control and



Prevention of the Department of Health and Human Services. (<http://www.cdc.gov/nip/recs/child-schedule.htm>)

6. Foster parents shall be physically, mentally, and emotionally capable of caring for children.
7. The foster family shall provide documentation of sufficient financial resources to meet their needs.
8. The foster family shall provide a plan for child care if both parents are employed outside the home.
9. Each foster parent shall obtain at least fifteen (15) hours of training each year after the first year. This does not apply to foster parents for infants in short term foster care awaiting adoptive placement. Such foster parents shall obtain ten (10) hours of training for the primary care giver and five (5) hours of training for the secondary care giver each year.
10. Each foster parent shall maintain current CPR certification and First Aid training.
11. No new placements of children shall occur with foster parents who have not satisfied the annual training requirements. Administrative-level staff, designated by the agency Director, may grant an exemption to this restriction for up to sixty (60) days. The administrator shall review the quality of care provided by the foster parents, and the reasons for failing to complete the training on time, in deciding whether to grant an exception.

## **200.4 Physical Requirements of the Home**

1. The foster home shall be accessible to community resources needed by foster children.
2. The foster home shall be clean and free of hazards.
3. The foster home shall have a continuous supply of sanitary drinking water. If the source is not a municipal water system, the water must be tested and approved by the Arkansas Department of Health.
4. The foster home shall have at least one (1) flush toilet, one sink with running water, and one bath or shower with hot and cold running water.
5. There shall be operational smoke alarms within ten (10) feet of the kitchen and each bedroom.
6. There shall be a chemical fire extinguisher in the cooking area of the home.
7. The foster parents shall practice and document emergency evacuation drills with each new child entering the home, if appropriate, and at least quarterly thereafter.

8. All heating units with hot external areas shall be screened or otherwise shielded to prevent contact with children.
9. The home shall have at least two (2) exterior doors situated to provide safe exit.
10. The home shall have an operational telephone.
11. Each child shall have adequate space for storing clothing and personal belongings.
12. All household pets shall have proof of current rabies vaccinations.
13. An assessment of the safety of the home shall include any water hazards, including, but not limited to, swimming pools and hot tubs, dangerous pets, and firearm safety. All firearms shall be maintained in a secure, locked location.
14. The foster home record shall contain an agency approved safety plan for swimming pools, hot tubs, and other water hazards.
15. A current floor plan of the home with room dimensions shall be in the foster home record.

## **200.5 Sleeping Arrangements**

1. Each bedroom shall have at least fifty (50) square feet of floor space per occupant.
2. Each bedroom used for foster children shall have a window to the outside.
3. No more than four (4) children shall share a bedroom.
4. Each foster child shall be provided with a comfortable bed, in good condition.
5. Children of the opposite sex shall not share the same bedroom if either child is four (4) years old or older.
6. No children shall share a bed if either child is four (4) years old or older.
7. No child under age six (6) years shall occupy a top bunk.
8. Foster children, except infants under age two (2) years, shall not share a sleeping room with adults.
9. Each foster child shall be provided with clean bedding, in good condition, that shall be laundered at least weekly, or as needed.

## **200.6 Medications**

1. Foster parents shall administer medications only in accordance with directions on the label.
2. All medications shall be stored in a secure location, and psychotropic medications shall be kept securely locked.
3. Foster parents shall be aware of possible side effects of all medications.

4. The dispensing of all medications shall be logged.

## **200.7 Transportation**

1. Foster families shall have their own transportation available.
2. Any vehicles used to transport foster children shall be maintained in compliance with motor vehicle laws, and be insured.
3. Foster parents shall allow foster children to be transported only by persons having a valid driver's license.
4. Foster children shall be transported only while wearing safety belts, or in child safety seats, according to Arkansas law.

## **200.8 Responsibilities of Foster Parents**

1. Foster parents shall provide regular activities to promote the physical, social, intellectual, spiritual, and emotional development of the children in care.
2. Foster parents shall provide each child their own clothing that is clean, well-fitted, seasonal, appropriate to age and sex, and comparable to community standards.
3. Foster parents shall allow foster children to acquire and keep personal belongings.
4. Foster parents shall fully cooperate with the child placement agency's efforts to achieve the case plan goals for each foster child, including visitation.
5. Foster parents shall provide routine transportation for each child.
6. Foster parents shall attend and participate in case planning and case plan reviews.
7. Foster parents shall attend school conferences concerning a foster child, and shall notify the placing agency of any situations that may affect the case plan or require agency involvement.
8. Foster parents shall notify the child placement agency promptly of serious illness, injury, or unusual circumstances affecting the health, safety, or welfare of the foster child.
9. Foster parents shall cooperate with the child placement agency and the Licensing Unit in conducting monitoring and investigations, and shall provide information required to verify compliance with rules.
10. Foster parents shall maintain absolute confidentiality of private information about each foster child and the birth family.
11. The foster parents shall give advance notice to the agency of any major changes that affect the life and circumstances of the foster family, whenever possible.
12. Foster parents shall keep a life book for each foster child that includes:
  - a. Periodic photographs of the child;

- b. A record of the child's memberships, activities, and participation in extra curricular school or church activities.

## 200.9 Monitoring & Re-evaluation

1. The agency shall monitor the foster home at least quarterly for continued compliance with licensing standards for foster homes. This does not apply to foster homes for infants in short term foster care awaiting adoptive placement. Before a child can be placed in such a foster home, a monitoring visit shall be done within the three (3) months prior to placement. An annual re-evaluation is required.
2. The child placement agency shall conduct an annual re-evaluation of the foster family home. Any foster home that does not substantially comply with the standards for approval shall not be approved for placement until compliance is achieved.
3. If the foster family experiences any major life changes (e.g., marriage, divorce, separation, health problems, death, change of residence, change of household composition), the child placement agency shall re-evaluate the home at that time.
4. The agency shall keep signed and dated documentation of quarterly monitoring visits and annual re-evaluations in the foster home record.

## 200.10 Visitation

***The standards in 200.10 do not apply to children in short term foster care awaiting adoptive placement.***

1. The agency shall develop a visitation plan that specifies when and how visits will occur between the child and the parents.
2. The child placement agency shall carry out the visitation plan to meet the terms of the plan.
3. Foster parents shall allow foster children and their families to communicate by mail and by phone according to the child's case plan.

## 200.11 Agency Responsibilities

1. The agency shall provide the foster parents with the information necessary to provide adequate care to each foster child, including the child's health, reason for entering care, probable length of placement, and siblings. As additional information is obtained by the caseworker, it shall be promptly shared with the foster parents.
2. The agency shall provide foster parents with instructions for contacting agency personnel any time.

3. An agency caseworker shall visit the child in person at least monthly while the child is in foster care.
4. The agency shall ensure that each child in foster care has a medical exam at least annually.
5. The agency shall include foster parents in case planning for each child, and shall provide a copy of the current case plan and visitation plan.
6. The child placement agency shall remain legally responsible for the supervision and decision making regarding foster children. Foster parents have daily responsibility for the care of the children.
7. The child placement agency shall have a written plan that provides for timely reimbursements to foster parents for costs of care and fees for services.
8. If the child placement agency receives a complaint of non-compliance with licensing standards, the agency shall investigate to learn if the foster home remains in compliance.
9. A written report of complaint investigations, including findings and any corrective action, shall be maintained in the foster home record.
10. The agency shall maintain a record for each foster family that contains all information and documentation required by licensing standards.
11. The agency shall prepare a closing summary, including reasons, if the home closes.

## **270. Therapeutic Foster Care**

*In addition to all requirements in Section 100 and Section 200.1 through 200.11, the following standards shall be met in order to be licensed as a Therapeutic Foster Care Agency:*

### **270.1 Therapeutic Foster Home Capacity**

1. The number of children placed in one therapeutic foster home shall not exceed two (2).
2. Before placing more than one (1) child in a home, the agency shall consider extraordinary problems/needs of each child (e.g., violent behavior, sexual offenses, seizure disorders). Justification of the appropriateness of placing a child in a home with another child shall be documented.

### **270.2 Staffing Requirements, Staff Training & support**

1. Primary responsibilities of program staff shall include treatment planning, leadership of the treatment team, case management, clinical and administrative supervision, twenty-four (24) hour crisis intervention, and discharge planning.
2. The therapeutic foster care agency shall employ a Clinical Director who shall be clearly responsible for implementation of treatment planning and service delivery. The Clinical Director shall be qualified by a master's degree in a human service field, shall have two years' experience in placement or treatment, and shall be a licensed mental health professional (LCSW, LPC, LMFT, Ph.D., psychologist, psychiatrist, etc.).
3. The therapeutic foster care agency shall employ at least one caseworker who shall coordinate the implementation of the treatment plan. The caseworker shall be qualified by a bachelor's degree in a human service field, or shall be a mental health paraprofessional, and shall be supervised by the Clinical Director.
4. All casework staff shall be trained in crisis prevention and intervention, CPR, and First Aid within the first sixty (60) days of employment.
5. All casework staff shall be provided with eight (8) hours of orientation, either prior to employment or within the first week of employment, which shall provide an overview of the following areas:
  - a. The agency's policies and procedures;
  - b. The client's rights, including confidentiality;
  - c. How to handle medical and non-medical emergencies;
  - d. The caseworker's clinical limitations;
  - e. How to document clinical information in the child's and family's records.

- f. General information regarding commonly prescribed medications and their side effects.
6. The agency shall provide twenty-four (24) hour on-call crisis intervention support to supplement that provided by the caseworker.

### **270.3 Therapeutic Foster Parent Responsibilities**

1. The therapeutic foster parents shall be provided with a written list of duties clearly detailing their responsibilities.
2. Therapeutic foster parents shall be responsible for implementing in-home treatment strategies specified in each child's treatment plan.
3. Therapeutic foster parents shall keep a written record, updated at least weekly, of each child's behavior and progress toward treatment goals.
4. The physical health of the therapeutic foster parents shall be equal to the stress inherent in the care of special needs children, as evidenced by the physician's statement.

### **270.4 Therapeutic Foster Parent Training**

1. Therapeutic foster parents shall be trained in crisis prevention and intervention.
2. Prior to the placement of children in their home, therapeutic foster parents shall complete at least thirty (30) hours of skill-based preservice training consistent with the agency's treatment methodology and the needs of the population served.
3. Each therapeutic foster parent shall complete at least twenty-four (24) hours of skill based training annually, excluding CPR and First Aid.

### **270.5 Medications**

1. The agency shall have an intervention policy that is non-medical, unless a specific medical condition is indicated.
2. When psychotropic medications are prescribed by a physician they shall be used in concert with other interventions.

### **270.6 Service Delivery**

1. The agency shall ensure that professional or casework staff visit with the child face-to-face at least once per week during the first three months after the child's placement with the agency, and at least every other week thereafter.
2. No caseworker shall be responsible for managing more than twelve (12) children's cases.

- 3.** The agency shall have a written program description that is available to residents and parents/guardians. The following information shall be included:
  - a.** Program philosophy and mission;
  - b.** Services and treatment modalities;
  - c.** Treatment planning procedures;
  - d.** Behavior management program and expectations of each child;
  - e.** Admission, exclusion, and discharge criteria;
  - f.** Aftercare services.
- 4.** The agency shall keep documentation that includes:
  - a.** Prior treatment documents and intake information;
  - b.** Assessments;
  - c.** Master treatment plan;
  - d.** Treatment plan review;
  - e.** Daily observations;
  - f.** Medication and physician's instructions, if applicable;
  - g.** Therapy progress notes.
- 5.** If family involvement is contraindicated, the agency shall make reasonable efforts to identify acceptable substitutes and shall include them in the therapeutic process.
- 6.** The agency shall establish procedures for hearing children's grievances, and shall ensure that each child understands the process.
- 7.** Records for each child shall be kept for five (5) years from the date of discharge.
- 8.** The agency shall document information regarding the rate of reimbursement, including "difficulty of care" payments, paid to foster parents for each child placed in the foster home.



## 300. Child Placement Agencies: Adoptions

*In addition to all standards in Section 100, the following standards shall be met:*

### 300.1 Selection of Adoptive Home

1. The agency shall select the home that is in the best interest of each child, the least restrictive possible, and is matched to the child's physical and emotional needs. The placement shall be based on an individual assessment of each child's needs.
2. The agency shall place children only in approved adoptive homes. All adoptive homes shall be approved prior to placement.
3. The Adoption Agency must have a foster care license in order to place children in short-term foster care while awaiting an adoptive placement..

### 300.2 Approval Process of Prospective Homes

1. In a two-parent home, the husband and wife shall be joint, applicants, shall each actively participate in the approval process, and shall provide verification to the social worker or agency conducting the home study that they have been married at least two (2) years.
2. The agency shall ensure there is a completed home study for each prospective adoptive family to determine if they should be approved as an adoptive home.
3. The social worker or agency conducting the home study shall have at least two (2) visits in person with the prospective adoptive family during the initial approval process. One of the visits shall be in the home of the prospective adoptive family.
4. The worker shall have a separate, face to face interview with each prospective adoptive parent.
5. The caseworker shall interview each age-appropriate member of the household in person.
6. Each member of the adoptive household shall have a physical exam within six (6) months prior to the approval by the social worker or agency conducting the home study, and annually thereafter until placement to ensure that no person has a health condition or disability that would interfere with the family's ability to care for a child.
7. The agency shall notify applicants in writing within sixty (60) days of completion of the final home visit concerning the acceptance, reason for further delay, or denial of their application.

### **300.3 Contents of the Home Study**

The adoptive home study shall contain the following information, current to within one (1) year prior to each adoptive placement: The home study shall be approved only by the social worker or agency conducting the home study.

1. The family's motivation for adoption and the desired characteristics of the child or children to be adopted.
2. Each family member's attitudes toward adoption.
3. Attitudes of the applicants toward the birth parents(s), including parent search issues.
4. Resolution of any infertility issues.
5. The mental health, emotional stability, and maturity of the applicants.
6. The physical health of all household members, including a physician's statement to the social worker or agency conducting the home study that a medical exam was performed.
7. The financial status and stability of the family, including proof to the social worker or agency conducting the home study of income and employment.
8. At least three (3) confidential personal references on the family. The references do not need to be updated unless this is a new adoption in the family or there have been significant changes.
9. The family's ability to cope with stress, loss, and crisis.
10. Adjustment and well-being of any minors residing in the home.
11. The family's child-caring skills and willingness to acquire additional skills.
12. The family's discipline practices.
13. Religious affiliation.
14. A description of the home, its location, and its environment.
15. An assessment of the safety of the home, including all water hazards, dangerous pets, and firearm safety. All firearms shall be maintained in a secure, locked location.
16. A statement in the home study narrative or an addendum that the adoptive parents report to the social worker or agency conducting the home study that they have or have not been denied approval as an adoptive home in the past, and if so, why.
17. A statement regarding the availability and results from criminal records and child maltreatment central registry checks, dated to within one (1) year prior to placement.
18. The stability of the adoptive family and their marriage, if applicable, shall be discussed and determined to be appropriate.

19. A recommendation regarding adoption, including the age, sex, characteristics, and special needs of children best served by this family.
20. If the adoptive family experiences any major life changes (e.g., marriage, divorce, separation, health changes, change of residence, change of household composition), the social worker or agency shall re-evaluate the family prior to placement of a child. An additional home visit is required if there has been a change of residence.

### **300.4 Services to the Adoptive Parents**

1. The agency shall provide services to the adoptive applicants to help them make an informed decision about adoption.
2. The agency shall provide a written statement of exclusion (e.g., single parents, unwed couples), if applicable, to adoptive applicants before a home study is conducted.
3. The following information (if available) shall be provided to adoptive parents regarding the child being considered for adoption:
  - a. Specific and accurate information about the needs and characteristics of the child.
  - b. The health/medical history of the child and the child's biological family.
  - c. The health status of the child at the time of placement.
  - d. Genetic and social history of biological relatives, including:
    - Medical history
    - Health status, if alive
    - Cause of and age at death, if deceased
    - Height, weight, eye and hair color
    - Levels of education and professional achievement
    - Ethnic origins
    - Religion.
4. The agency caseworker shall ensure that at least two (2) face to face post-placement visits are made within six (6) months after the placement of the child. One of the visits shall be in the home of the adoptive family.
5. The agency shall have a plan for caring for children in case the placement disrupts before the issuance of a decree of adoption.
6. The agency shall offer supportive services to the adoptive family for at least six (6) months following placement.

### **300.5 Services to Birth Parents**

If the agency is providing casework services to either birth parent, the following services shall be offered:

1. An intake study completed within thirty (30) days after the client's decision to work with the agency.
2. Obstetrical care during pregnancy, birth, and up to six (6) weeks after birth.
3. Counseling for both parents that shall include the following:
  - a. Information, rights, options, and obligations regarding the adoption process.
  - b. Issues related to grief and loss.

### **300.6 Birth Parent Records**

The agency may elect to keep birth parent records and the child's records in the same file. If the agency has provided casework services to the birth parents, the following information shall be kept in a confidential file:

1. The parents' case plan, including any reviews/updates.
2. All correspondence with the birth parents.
3. All signed documents between the agency and the birth parents.
4. Documentation of all casework services provided before and after the adoption, current to within one (1) month of occurrence.

### **300.7 Adoptive Family Records**

The agency shall keep a confidential case record for each family that received a child for adoption. The record shall contain:

1. The application to adopt;
2. The completed home study;
3. Criminal Record checks and Child Maltreatment Central Registry checks;
4. A copy of the information given to the adoptive parents regarding the child they received;
5. Copies of all legal documents concerning the adoption.

### **300.8 Record Maintenance**

1. The agency shall maintain a permanent file on any adoption finalized, which shall be accessed according to Arkansas law.
2. If the agency establishes or contracts with a Mutual Consent Voluntary Adoption Registry, it shall be maintained according to Arkansas law.

## 400. Residential Child Care Facilities

*In addition to all standards in Section 100, the following standards shall be met:*

### 400.1 Admission

1. The facility shall establish that all persons referred for admission are under the age of eighteen (18) years at the time of admission. Residents who remain in the program after reaching age eighteen (18) years shall continue to be subject to the facility's behavior management program.
2. Except an emergency shelter, the facility shall admit a child under age six (6) years only if that child is a part of a sibling group of whom one child is age six (6) years or older, or if it is the summer before the child is eligible to enter first grade. Exception is also made for the infant child of a mother who is admitted to the facility.
3. Emergency shelters may admit children for a maximum of ninety (90) days.
4. When a child under the age of six (6) years is in care, the facility shall evaluate the continued appropriateness of the placement every ninety (90) days and document the evaluation in the child's record.
5. If a facility has been inactive for more than six (6) months, the Licensing Unit shall be notified before children are taken into care.

### 400.2 Personnel

1. Each facility shall employ child caring staff who shall be responsible for ensuring the proper care, treatment, safety, and supervision of the children in care at the facility.
2. There shall be a staff/child ratio of at least 1:9 during waking hours and at least 1:12 during sleeping hours. If any child is under age six (6) years, the ratio shall be at least 1:7 at all times. Only staff who directly supervise children shall be counted in this ratio. Staff members own children shall be counted in the ratio. *Psychiatric facilities see Section 500.*
3. Agencies that mix children requiring different levels of supervision shall maintain the most intensive staff/child ratio.
4. Child caring staff shall be at least twenty-one (21) years old and have a high school diploma or the equivalent.
5. Assistant child caring staff shall be at least nineteen (19) years old, have a high school diploma or the equivalent, and be under the direct supervision of regular staff.

6. All child caring staff and each member of a houseparent's family older than twelve (12) years shall receive a Mantoux skin test for tuberculosis upon entry to the program and every three years thereafter, as long as test results remain negative. Staff and houseparent family members with a positive skin test must provide documentation from a physician every two years certifying that they are free from communicable tuberculosis.

### 400.3 Staff Training

1. All direct care staff shall be trained in crisis intervention strategies.
2. No staff shall be allowed to participate in a physical restraint until properly trained to do so. Psychiatric facility staff shall be certified in physical intervention.
3. All direct care staff shall have thirty (30) hours of job related in-service or workshop training each year. First aid, CPR, and in-service training at the facility may be included. Part-time staff shall have at least fifteen (15) hours of job related in-service or workshop training each year.
4. At least one (1) staff currently certified in CPR and First Aid must be able to immediately respond to an emergency.

### 400.4 Personal & Medical Care

1. The facility shall provide each child with adequate and nutritious food.
2. The facility shall ensure that each child has sufficient sleep for his/her age and physical condition.
3. Each child shall have a medical exam at least annually. Health exams need not be repeated during the year if a child moves from one facility or agency to another, provided the results of the exam are available to the receiving facility or agency.
4. Each child shall be instructed in good grooming and personal hygiene habits.
5. Each child shall be provided with his/her own clothing that is clean, well fitting, seasonal, and appropriate to age and sex, unless otherwise directed by a physician.
6. All medications shall be administered to children by staff according to medical instructions. *Psychiatric facilities see Section 500.*
7. The dispensing of all medications shall be logged.
8. Medications belonging to children shall be returned to the parent or custodian upon discharge. *Psychiatric facilities see Section 500.*
9. When psychotropic medications are prescribed by a physician, they shall be used in conjunction with other treatment interventions.

10. The facility shall notify a child's parent(s) or legal guardian and law enforcement immediately after the child is discovered to have run away, and promptly upon the child's return.
11. The parent or guardian shall be promptly notified of any serious illness or injury.

#### **400.5 Education, Work, & Training**

1. The facility shall teach each child the daily living tasks required as a part of living in a group setting, and shall assign only light chores that are age-appropriate.
2. The facility shall safeguard money earned by each child, and shall ensure that each child's earnings are available to that child under staff supervision for personal use.
3. The facility shall not allow a child's outside employment, chores, or extracurricular activities to interfere with the child's time for school, sleep, family visits, or case plan activities.
4. The facility shall not use a child as a substitute for staff.
5. No child shall be allowed to operate machinery or dangerous equipment without proper adult supervision.

#### **400.6 Grounds**

1. The grounds of the facility shall be kept clean and free of safety hazards.
2. The facility shall provide sufficient outdoor recreation space and age-appropriate play equipment to meet the needs of each child in care.
3. Swimming pools shall be inspected and approved annually by the Arkansas Department of Health.

#### **400.7 Buildings**

1. All buildings used by children or staff shall be inspected and approved annually for fire safety as required by authorized fire inspection officials.
2. All buildings used by children or staff shall be inspected and approved annually for health and sanitation as required by the Arkansas Department of Health.
3. All buildings shall comply with local zoning ordinances and land use requirements where those exist.
4. All buildings shall comply with building codes in effect at the time the building was converted to use as a child care facility.
5. All buildings and furnishings shall be maintained in a safe and clean condition.
6. There shall be no more than twelve (12) children in a sleeping unit. Sleeping units sharing the same building shall be separated by a wall, kitchen, dining room, or

other such area that gives a sense of separation. This does not apply to psychiatric treatment facilities.

7. All parts of buildings used as living, sleeping, or bath areas shall have a heating and ventilation system that keep the temperature a minimum of 65 degrees.
8. The facility shall provide a living area that has at least thirty-five (35) square feet of floor space per child. The dining area and indoor recreation area may be included in this space.
9. The facility shall provide a dining room.
10. The facility shall have a kitchen.

## **400.8 Sleeping Arrangements**

The facility shall provide bedrooms for the children that meet the following requirements:

1. There shall be no more than four (4) children per bedroom.
2. There shall be at least fifty (50) square feet of floor space per child in each bedroom.
3. No child age four (4) years or over shall share a bedroom with a child of the opposite sex.
4. Each child shall have a separate bed with a mattress, sheets, pillow, pillowcase, and adequate cover, all in good condition.
5. Beds shall be positioned to ensure all children can easily exit the room in case of emergency.
6. No child under the age of six (6) shall occupy a top bunk.
7. Bedding shall be changed at least weekly, more often if needed.
8. Each child shall have an area to store personal belongings.
9. Staff sleeping quarters shall be separate from children's sleeping rooms.
10. Room arrangements shall be based on characteristics of the individual resident to ensure the safety of each child.
11. Facilities that admit adult clients shall provide sleeping arrangements to ensure separation of adults from children.

## **400.9 Bathrooms**

The facility shall provide bathrooms for the children that meet the following requirements:

1. There shall be a separate toilet, bathtub or shower, and sink for each six (6) children.
2. There shall be an adequate supply of hot and cold running water.



3. The bathroom shall be clean and sanitary.
4. There shall be separate bath and toilet facilities for boys and girls.
5. There shall be an adequate supply of soap, towels, and tissues.

### **400.10 Health & Safety**

1. The facility shall have an operable telephone or comparable communication system.
2. The facility shall have a continuous supply of clean drinking water. If the water source is not a municipal system, the source must be approved by the Arkansas Department of Health.
3. A private sewage/septic system shall be approved by the Arkansas Department of Health.
4. There shall be operational smoke detectors near the cooking area, heating units, and within ten (10) feet of each bedroom.
5. A portable chemical fire extinguisher shall be kept in the cooking area of each building.
6. There shall be an emergency evacuation plan diagramed and posted in each building used by children.
7. Fire drills shall be practiced each month, and severe weather and other appropriate emergency drills shall be practiced quarterly. A record of drills shall be maintained, showing date and time of day of the drill, number of participants, and length of time required to reach safety. Each newly admitted child shall be instructed in emergency procedures during orientation.
8. All medications shall be kept securely locked.
9. The facility shall have proof of current rabies vaccinations for all household pets.

### **400.11 Transportation**

1. The facility shall have its own transportation available.
2. Any vehicles used to transport children shall be maintained in compliance with motor vehicle laws, and be insured.
3. Children shall be transported only by a staff person possessing a valid driver's license.
4. Children shall be transported only while wearing safety belts, or in child safety seats, according to Arkansas law.

## 500. Psychiatric Residential Treatment Facilities

*In addition to all standards in Sections 100 and 400, the following standards shall be met:*

### 500.1 Licensing Approval & Monitoring

1. A multi-disciplinary team shall assist the Licensing Specialist in the initial study for advisory purposes. The team shall include a licensed mental health professional in the appropriate field.
2. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to assist the Licensing Specialist during monitoring visits for advisory purposes.
3. All applicants for a Psychiatric Residential Treatment Facility license after January 1, 2000 shall obtain a Permit of Approval (POA) from the Arkansas Health Services Agency prior to submitting an application or change of status request to the Child Welfare Agency Review Board.

### 500.2 Personnel

The agency shall employ:

1. A physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry.
2. A Director of Nursing/Nurse Manager who is licensed in Arkansas as a Registered Nurse;
3. A Program Director who has at least a master's degree in a human services field and is licensed in Arkansas as a mental health professional;
4. One or more therapists having at least a master's degree in a human services field and licensed as mental health professionals;
5. Child caring staff who are at least twenty-one (21) years of age and have a high school diploma or the equivalent;
6. The staff/child ratio shall be at least 1:6 during waking hours and at least 1:8 during sleeping hours. Only staff who directly supervise children shall be counted in this ratio.

### 500.3 Program

1. The agency shall have a written program description that is available to residents and parents or guardians. The following information shall be included:
  - a. program philosophy and mission;
  - b. services and treatment modalities;
  - c. treatment planning procedures;
  - d. behavior management program and expectations of each child;
  - e. levels and privileges (if applicable);
  - f. admission, exclusion, and discharge criteria
  - g. aftercare services.
2. The agency shall keep documentation that includes:
  - a. prior treatment documents and intake information;
  - b. assessments;
  - c. master treatment plan;
  - d. treatment plan review;
  - e. daily behavioral observations
  - f. medication and physician's orders;
  - g. therapy progress notes;
  - h. physician notes.
  - i. nursing summaries
3. The agency shall establish safeguards to limit access to records by authorized individuals only.
4. The agency shall have written policies and procedures for family therapy, family visitation, and therapeutic passes subject to progress, treatment and physician's orders.
5. If family involvement is contraindicated, the agency shall make reasonable efforts to identify acceptable substitutes and shall include them in the therapeutic process.
6. The agency shall establish and post a written list of children's rights.
7. The agency shall establish a procedure for hearing children's grievances, and shall ensure that each child understands the process.
8. Records for each child shall be kept for five (5) years from the date of discharge.

## **500.4 Behavior Management**

1. The agency shall have a written policy governing the use of behavior control measures with children, including physical, mechanical, or chemical restraints and seclusion rooms.
2. Chemical restraints shall be used only if so ordered by a physician.
3. Seclusion or mechanical restraints shall be used only if ordered by a physician, clinically qualified registered nurse, or other licensed independent practitioner. The agency may authorize other qualified, trained staff members who are not licensed independent practitioners to initiate the use of seclusion or restraint before an order is obtained from the licensed independent practitioner. The following licensed independent practitioners, if clinically qualified, may be approved by the agency to order seclusion or restraints or to conduct the face-to-face assessments required following such order: licensed certified social worker, licensed marriage and family therapist, licensed psychological counselor, licensed Ph.D. psychologist, licensed professional counselor, licensed professional associate counselor, or other licensed mental health professional. The licensed professionals shall work under the supervision and/or review of the agency medical director.
4. Each written order for a physical restraint or seclusion is limited to two (2) hours for children ages nine (9) to seventeen (17) years, or one (1) hour for children under age nine (9) years. A physician, clinically qualified registered nurse or other authorized licensed independent practitioner must conduct a face-to-face assessment of the child within one (1) hour after the initiation of the ordered intervention.
5. The original order may only be renewed in accordance with these limits for up to a total of twenty-four (24) hours. After the original order expires, a physician, clinically qualified registered nurse or other authorized licensed independent practitioner must see and assess the child before issuing a new order.
6. Staff shall search each child before placement in seclusion, and all potentially hazardous items shall be removed.
7. Staff shall visually check each child in seclusion or restraints at least every fifteen (15) minutes, and shall document each check.

## **500.5 Health Care Services**

1. The agency shall have a written policy for conducting health and related exams and assessments upon admission.
2. All controlled substances shall be kept under double lock.
3. Medication shall be dispensed in accordance with state and federal laws.

4. The agency shall have a written plan for prescribing, receipt, storage, dispensing, and accounting for all medications, including medications in the client's possession at the time of admission.
5. Disposal of unused medications and contaminated medical supplies shall follow established medical procedures.
6. Any stimulant or psychotropic medicine requiring intra-muscular injection shall be administered only by a physician, registered nurse, or LPN.
7. The agency shall require medical representation at major treatment staffings on each child.

## **500.6 Building Requirements**

1. Seclusion rooms shall meet the following criteria:
  - a. At least thirty-five (35) square feet of floor space;
  - b. Sufficient lighting, with a shatterproof, recessed light fixture beyond reach of the child;
  - c. A door able to be opened from the outside at all times without use of a key or a removable locking device;
  - d. A door with a shatterproof observation window;
  - e. Located reasonably near to the staff work area.
2. The facility shall be designed, constructed, and furnished to reduce the risk of suicide and assault including, but not limited to:
  - a. Light fixtures that are recessed or abut to the ceiling;
  - b. No wooden or wire hangers;
  - c. No metal flatware or kitchen utensils;
  - d. Non-breakable windows or an alarm system that would signal when a child has left the facility without permission;
  - e. No exposed electrical wires, cords, chains, or ropes;
  - f. Sturdy, well-constructed furniture that cannot be broken for use as a weapon or means of self-inflicted injuries;
  - g. No exposed open electrical outlets.

## **600. Sexual Offender Programs**

*In addition to all standards in Section 100, and standards in Section 200, 400 and/or 500, as applicable, the following standards shall be met:*

### **600.1 Licensing Approval & Monitoring**

1. A multi-disciplinary team shall assist the Licensing Specialist during the initial study for advisory purposes. This team shall include a licensed mental health professional.
2. At the discretion of the Licensing Unit, a multi-disciplinary team may be asked to assist the Licensing Specialist during monitoring visits for advisory purposes.

### **600.2 General Requirements**

1. A sexual offender program shall not be located within one thousand (1000) feet of an elementary school, day care center, or day care family home.
2. The agency shall have written policies governing the supervision and monitoring of children on the grounds and in the community, including direct visual or auditory monitoring of moderate or high risk offenders (based on 600.3.3.d).
3. The agency shall have a written philosophy of public safety and a policy describing procedures to ensure public safety.
4. The staff/child ratio shall be at least 1:6 during waking hours and at least 1:8 during sleeping hours.
5. The agency shall have a written plan providing for appropriate supervision of all children, including allowance for diminished supervision in accordance with each child's progress.
6. Twenty-four (24) hour awake supervision is required for residential child care programs and psychiatric residential treatment programs.

### **600.3 Admission**

1. The agency shall have written policies regarding description of the target population, admission/exclusion criteria, and discharge criteria.
2. The agency shall have a written policy describing sexual offender risk levels it will accept for admission, and therapeutic interventions it will utilize for each risk level.
3. Intake information shall include:
  - a. description of the offense;
  - b. psychosexual assessment;
  - c. relapse risk factors;
  - d. treatment precautions;
  - e. progress indicators;
  - f. discharge summary from previous offender-specific treatment;
  - g. justification for recommended level of treatment.

### **600.4 Personnel**

1. The Program Director or Clinical Director (the person supervising casework services) shall meet all other requirements, plus have not less than forty (40) hours of sexual offender treatment training and a minimum of two (2) years of sexual offender treatment experience. Certification as a sexual offender treatment trainer may be substituted for the required experience.
2. Direct care staff shall have a minimum of ten (10) hours of sexual offender treatment training within sixty (60) days of their employment.

### **600.5 Staff Training**

All direct care staff shall have at least ten (10) hours of sexual offender training annually, which may be included in the required thirty (30) hours of annual training (Section 403.3).

## **600.6 Program**

1. The agency shall offer a written program description that includes treatment tasks appropriate to the previously identified needs of the individual client (see Section 603.3), including but not limited to:
  - a. acknowledgement of offense;
  - b. cognitive distortions;
  - c. cycle of abuse;
  - d. human sexuality;
  - e. sexual arousal patterns;
  - f. victim empathy;
  - g. social skills development;
  - h. relapse prevention;
  - i. community registration.
2. If treatment services are contracted, there shall be evidence of participation by the contracted therapist in treatment planning reviews and individualized program implementation.

## **600.7 Sleeping Arrangements**

1. Two (2) children in Sexual Offender programs shall not share a bedroom. Temporary arrangements for two (2) children sharing a bedroom shall be permitted due to census fluctuations or specialized treatment interventions.
2. Room arrangements shall be based on characteristics of the individual residents to ensure the safety of non-offender and/or low risk residents.



## **700. Independent Living**

***In addition to all standards in Sections 100, 200 and /or 400 as applicable , the following standards shall be met:***

### ***Agency Responsibilities***

1. The agency shall have a residential or placement license in good standing.
2. The agency shall have written policies and procedures specific to the Independent Living program, which shall include written rules of conduct and potential consequences for rule violations.
3. The agency shall assign a specific caseworker to each youth in the Independent Living program who will be responsible for delivery of all treatment services to the youth according to the case plan.
4. A case plan must be completed and entered into the youth's record showing a goal of Independence and indicating all persons responsible for services to be provided.
5. The case plan or accompanying documents shall show a complete budget for the youth. This budget shall be developed jointly by the youth and the caseworker.
6. The case plan, or accompanying documents, shall include written rules of conduct for the youth and shall include, but not limited to an agreement to abide by all federal, state and local laws including curfew ordinances.
7. Written policies shall include emergency and crisis intervention procedures, including the youth's 24-hour ability to contact the agency.
8. The assigned caseworker shall visit the youth in the youth's residence not less than once per month. This visit and observations shall be documented in the case record.
9. The agency shall ensure that agency personnel or qualified volunteers visit the youth in the youth's residence at least once each week and this visit shall be documented in the case record.

## ***Eligibility Requirements***

To be eligible for placement into an out-of-home independent living program, the youth must:

1. Be evaluated by the caseworker or administrative staff to determine that placement in the Independent Living program does not present a health or safety risk to the youth or the community.
2. Be at least 16 years of age.
3. Must be 17 years of age to live in an off campus residence.
4. Have been assessed in basic life-skills, including, but not limited to:
  - a) money management
  - b) food management
  - c) personal appearance
  - d) personal hygiene/health/birth control
  - e) housekeeping
  - f) transportation
  - g) emergency and safety skills
  - h) knowledge of community resources
  - i) interpersonal skills
  - j) legal skills
  - k) housing
  - l) educational planning
  - m) job-seeking and job maintenance skills
5. Be actively engaged in an educational program such as high school, GED, or post-secondary education including college or vocational training. If the youth has completed all educational requirements according to state law, he/she must be employed or actively involved in a supervised job search program.

***Living Unit / Health / Safety***

1. The living unit shall be accessible to community resources, including public transportation if necessary.
2. The living unit shall be clean and free of safety hazards. The safety assessment shall include all potential water hazards, such as swimming pools, hot tubs, ponds and nearby lakes or streams.
3. Each living unit shall have operable toilet, hygienic kitchen and other standard features for independent living. Any exceptions (e.g. laundry arrangements) shall be noted in the case plan or accompanying documentation.
4. There shall be operational smoke alarms within ten (10) feet of the kitchen and each bedroom.
5. There shall be a chemical fire extinguisher in the cooking area of the living unit and the youth shall be instructed in its use.
6. The living unit shall have an operable telephone or the youth shall be provided with an alternative means of emergency communication (e.g. cell phone).
7. Any pets shall be approved by the caseworker and shall have rabies vaccinations as required by law.
8. No firearms, dangerous weapons, or illegal substances shall be permitted in any living unit.
9. If the participating youth is the parent of a child living in his/her care, the parent shall have current CPR/First Aid certification and an approved child care plan.
10. Each living unit shall be occupied by members of the same gender.
11. Overnight guests must have prior approval of the caseworker and cannot include unrelated members of the opposite gender.

## **Appendix**

# **The Child Welfare Agency Licensing Act**

§ 9-28-401. Short title.

Statutes

**This subchapter shall be known as the "The Child Welfare Agency Licensing Act."**

History. Acts 1997, No. 1041, § 1.

Research references

#### RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

§ 9-28-402. Definitions.

Statutes

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons which has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Division of Children and Family Services of the Department of Health and Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

- (A) Revocation of license;
- (B) Suspension of license;
- (C) Conversion of license from regular status to provisional status;
- (D) Imposition of a civil penalty;
- (E) Denial of application; or
- (F) Reduction of licensed capacity;

(3) "Alternative compliance" means a request for approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a regulation provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the regulation;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

(A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Department of Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child welfare agency" means any person, corporation, partnership, voluntary association or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves; or

(C) Plans for or assists in the placements described in subdivision (a)(6)(B) of this section;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, who engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(8)(A) "Class A violation" means violations of essential standards, including those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(9) "Class B violation" means any other violations of standards that are not Class A violations;

(10) "Division" means the division within the Department of Health and Human Services that shall be designated by the Director of the Department of Health and Human Services to administer this subchapter;

(11) "Emergency child care" means any residential child care facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, who otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States government;

(B) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities. In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards. Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Department of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Arkansas State Hospital Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

(G) Any facility licensed as a family home pursuant to § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services of the Department of Health and Human Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and which complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services of the Department of Health and Human Services; and

(M) Any developmental disabilities services waiver provider licensed under § 20-48-208 or § 20-48-601 et seq.;

(13) "Foster home" means a private residence of one (1) or more family members that receives from a child placement agency any minor child who is unattended by a parent or guardian in order to provide care, training, education, custody, or supervision on a twenty-four-hour basis, not to include adoptive homes;

(14) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(15) "Minimum standards" means those rules and regulations as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(16) "Provisional foster home" means a foster home opened for no more than six (6) months by the division for a relative of a child in the custody of the Division of Children and Family Services after it:

(A) Conducts a health and safety check, including a central registry check and a criminal background check or a check with local law enforcement, of the relative's home;

(B) Performs a visual inspection of the home of the relative to verify that the relative will meet the standards for opening a regular foster home;

(17) "Psychiatric residential treatment facility" means a residential child care facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(18) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(19) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(20) "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated minors;

(21) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency. Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(22) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children which meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; and

(23) "Unrelated minor" means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction.

History. Acts 1997, No. 1041, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1.

**Publisher notes**

A.C.R.C. Notes. Acts 1995, No. 1162, § 3, provided: "All powers vested in the State Hospital Board and Arkansas Youth Services Board are hereby transferred by type one transfer to the DHS State Institutional System Board, and any reference to the State Hospital Board or the Arkansas Youth Services Board contained in the Arkansas Code of 1987 Annotated, shall be deemed to refer to the DHS State Institutional System Board."



Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, Nos. 1766 and 2234. Subdivisions (22) and (23) of this section were also amended by Acts 2005, No. 874, § 2, to read as follows: "(22) 'Provisional foster home' means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative of a child in the custody of the division after the division conducts: (A) A health and safety check, including a central registry check and a criminal background check or check with local law enforcement, on the relative and the relative's home; and (B) A visual inspection of the home of the relative; "(23) 'Relative' means a person within the fifth degree of kinship by virtue of blood or adoption."

Amendments. The 2005 amendment by No. 1766 added "or" in (2)(E); inserted present (12)(L), (12)(M), (16) and (18); and redesignated the remaining subdivisions accordingly.

§ 9-28-403. Child Welfare Agency Review Board - Creation - Authority.

Statutes

(a)(1) There is created the Child Welfare Agency Review Board to serve as the administrative body to carry out the provisions of this subchapter.

(2) The board shall have the authority to promulgate rules and regulations to enforce the provisions of this subchapter.

(b) The board may also identify and implement alternative methods of regulation and enforcement which may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of "child welfare agency", as may be required by changes in the types of child welfare programs that may occur, and to promulgate separate regulations for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and

(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c)(1) The division is designated as the governmental agency charged with the enforcement of the provisions of this subchapter.

(2) Only the division, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except where otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association or other entity shall be found to operate or assist in the operation of a child welfare agency which has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in the jurisdiction in which the

child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association or other entity from operating the child welfare agency.

(e)(1) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought pursuant to this subchapter.

(2) The Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence shall also apply to adverse action hearings.

History. Acts 1997, No. 1041, § 3.

§ 9-28-404. Child Welfare Agency Review Board - Composition.

Statute text

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

- (1) The director of the division or his or her designee;
- (2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;
- (3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;
- (4) Two (2) representatives from licensed residential child care facilities;
- (5) One (1) representative from a licensed psychiatric residential treatment facility;
- (6) One (1) representative from a licensed emergency shelter; and
- (7) One (1) representative from the public at-large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the division.

(d) The members of the board shall select a chair from among its voting membership.

History. Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2.

Publisher notes

Amendments. The 2001 amendment, inserted "his or her" in (a)(1); substituted "his or her designee, as a nonvoting ex officio member" for "his designee" in (a)(8); and substituted present (d) for the former, which read: "The division representative on the board shall serve as chair and shall only vote in the event of a tie."

The 2003 amendment deleted (a)(8) and made related changes.

Cross References. Compensation of state boards, § 25-16-901 et seq.

§ 9-28-405. Child Welfare Agency Review Board - Duties.

#### Statutes

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The board shall have exclusive authority to promulgate rules and regulations that:

(1) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(2) Promote safe and healthy physical facilities;

(3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(4) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(5) Ensure adequate and healthy food service;

(6) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(7) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(8) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(9) Require the compilation of reports and making those reports available to the Division of Youth Services of the Department of Health and Human Services when the board determines it is necessary for compliance determination or data compilation;

(10) Ensure that a child placement agency:

(A) Treats clients seeking or receiving services in a professional manner, as defined by regulations promulgated pursuant to this section; and

(B) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Health and Human Services where complaints can be lodged;

(11) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(12) Establish rules governing retention of licensing records maintained by the division.

(d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or

(E) Prohibiting the use of corporal discipline.

(2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the division in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B)(i) The division may then file a petition before the board seeking to enforce the rule.

(ii) The division shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule or regulation of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the division that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the division any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the division;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by regulations promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h)(1) The board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or regulation.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the division's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) Nothing in this section shall prevent the division or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a postdeprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee a written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay

prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record which constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules and regulations promulgated pursuant to this section and all public comment received in writing by the division in response shall be made available for review by the Senate Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule or regulation promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in the Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person or facility providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o)(1) The Department of Health and Human Services shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

History. Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2.

#### Publisher notes

Amendments. The 2005 amendment by No. 2225 added (a)(3), (c)(10) and (c)(11); inserted "or issue letters of reprimand or caution to a child welfare agency" in (f)(1)(B); added (f)(1)(B)(vi)-(viii); added (i)(1)(B); substituted "five hundred dollars (\$500)" for "one hundred dollars (\$100)" in (i)(3)(A)(i); in (i)(3)(A)(ii), inserted "civil penalties of" and substituted "two thousand five hundred dollars (\$2,500)" for "five hundred dollars (\$500)"; substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in (i)(3)(B)(i); in (i)(3)(B)(ii), inserted "civil penalties" and substituted "five hundred dollars (\$500)" for "two hundred fifty dollars (\$250)"; added (o); and made minor stylistic changes.

The 2005 amendment by No. 2234 inserted "have exclusive authority" in (c); substituted "under this subchapter" for "thereunder" in (c)(6); added (c)(10) [now (c)(12)]; and made related changes.

§ 9-28-406. Division enforcement duties.

#### Statutes

(a) The division shall advise the Child Welfare Agency Review Board regarding proposed rules and regulations. The division shall obtain comments from the board prior to initiating the rule promulgation process.

(b)(1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection and investigation are necessary to determine whether the child welfare agency will be or is being operated in accordance with this subchapter and the rules and regulations promulgated by the board.

(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c)(1) The division or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d)(1) The division shall assist licensees and applicants in complying with published rules and regulations by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter. The division must respond to the request in writing within twenty (20) business days of receiving the request. If the division's response is that the subject of the request would not comply with published standards, the division shall suggest an



alternative practice which in its opinion would comply with published standards when it is possible to do so; and

(B) A written opinion required in subdivision (d)(2)(A) of this section is binding on the division as a declaratory order if the applicant or licensee has acted in reliance on the opinion. Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e)(1) The division shall issue corrective action notices following inspections of child welfare agencies as provided in subdivision (e)(1) of this section.

(2) If the division finds that a child welfare agency has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or welfare of the persons served by the program, the division shall issue a corrective action notice to the child welfare agency. The corrective action notice must require the licensee to outline a corrective action plan. The division's corrective action notice shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3)(A) If the child welfare agency believes that the contents of the division's corrective action notice are in error, the welfare agency may ask licensing authorities to reconsider the parts of the corrective action notice that are alleged to be in error. The request for reconsideration must be in writing, delivered by certified mail, specify the parts of the corrective action notice that are alleged to be in error, explain why they are in error, and include documentation to support the allegation of error.

(B) The division shall render a decision on the request for reconsideration within fifteen (15) working days after the date the request for reconsideration was received. The licensee's request for reconsideration and supporting documentation shall be retained by the division and made a part of the licensee's record.

(4) If upon reinspection, the division finds that the licensee has corrected the violation or violations specified in the corrective action notice, the division employee shall indicate this correction and the date the correction was verified in the licensee's file. If upon reinspection, the division finds that the licensee has not corrected the violations specified in the corrective action order within the required time frame, the division may in its discretion petition the board to impose appropriate adverse action against the licensee. In the case of an applicant for a license, if the applicant has not corrected the violations in a previously issued corrective action notice, the division may recommend denial of the application for a child welfare agency license.

History. Acts 1997, No. 1041, § 6.

§ 9-28-407. Licenses required and issued.

## Statute text

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

(3) Any child welfare agency capacity licensed or permitted by the board as of March 1, 2003, whether held by the original licensee or by a successor in interest to the original licensee, is exempted from:

(A) Obtaining any license or permit from the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

(B) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003; and

(C) Obtaining any permit from the agency or the commission to operate at any future expanded capacity serving only non-Arkansas residents unless a permit is required by federal law or regulation.

(4) Any further expansion of capacity by a licensee of the board shall require a license or permit from the office and the agency unless the bed expansion is exempted under subdivisions (a)(3)(A)-(C) of this section.

(5)(A) Subdivisions (a)(3) and (4) of this section shall be construed to include a child welfare agency that is licensed or permitted by the Child Welfare Agency Review Board as a residential facility as of March 1, 2003, if the licensee then met and continues to meet the following criteria:

(i) The licensee is a nonhospital-based residential facility that specializes in providing treatment and care for seriously emotionally disturbed children under eighteen (18) years of age who have co-occurring substance abuse and psychiatric disorders;

(ii) The licensee possesses accreditation from at least one (1) of the following national accreditation entities:

(a) The Commission on Accreditation of Rehabilitation Facilities;

(b) The Council on Accreditation of Services for Families and Children; or

(c) The Joint Commission on Accreditation of Healthcare Organizations;

(iii) The licensee is licensed by the Bureau of Alcohol and Drug Abuse Prevention or its successor; and

(iv) The licensee is operating a nontraditional program that is approved by the Department of Education.

(B)(i) Licensees described in subdivision (a)(5)(A) of this section shall be eligible for reimbursement by the Arkansas Medicaid Program under the same methodology and at the same reimbursement rates as residential treatment

facilities that do not specialize in treating children with co-occurring substance abuse and psychiatric disorders.

(ii) However, Medicaid payments shall be reduced by payments received from other payers in connection with Medicaid-covered care and treatment furnished to Medicaid recipients.

(b)(1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c)(1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2) The division shall also furnish the applicant with a copy of this subchapter and the policies and procedures of the board at the time the person requests an application form. The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d)(1) The division shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The division shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

(A) A completed application form prepared and furnished by the board;

(B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;

(C) A complete personnel list with verifications of qualifications and experience;

(D) Substantiation of the financial soundness of the agency's operation; and

(E) A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care.

(e)(1) The board shall issue a regular license which shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements; or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

(2) The board may issue a provisional license which shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards

but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined. The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f)(1) A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it shall be transferable from one (1) holder of the license to another or from one (1) place to another.

(2) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures must be followed:

(A) The seller shall notify the division of the sale at least thirty (30) days prior to the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until such time as the agency is closed or a license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations or deficiencies occurring before the transfer of a license to the buyer;

(D) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(E) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the office and regarding obtaining any permits from the Health Services Permit Agency or the commission shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

(3) The effective date and expiration date of the license;

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the agency, if the agency is not a child placement agency; and

(6) The status of the license, whether regular or provisional; and

(7) Any special conditions or limitations of the license.

(h)(1) Reports, correspondence, memoranda, case histories, or other materials compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

(A) To the director as required by regulation;

(B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(C) To multidisciplinary teams under § 12-12-502(b);

(D)(i) To the child's parent, guardian, or custodian.

(ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child;

(iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;

(E) To the child;

(F)(i) To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.

(ii) "Health care providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;

(G) To school personnel and day care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(H)(i) To foster parents, the foster care record for foster children currently placed in their home.

(ii) However, information about the parents or guardians and any siblings not in the foster home shall not be released;

(I)(i) To the board.

(ii) However, at any board meeting no information which identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;

(J) To the Division of Youth Services of the Department of Human Services, including child welfare agency licensing specialists;

(K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct the audit or activity;

(L) Upon presentation of an order of appointment, to a court-appointed special advocate;

(M) To the attorney ad litem for the child;

(N) For law enforcement or the prosecuting attorney at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. 671(a)(8), as in effect January 1, 2001;

(R) For the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; or

(S)(i) To individual federal and state representatives and senators and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information which identifies by name or address any recipient of services; or

(T) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury.

(2) Foster home and adoptive home records are confidential and shall not be released except:

(A) To the foster parents or adoptive parents;

(B) For purposes of review or audit, by the appropriate federal or state agency;

(C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;

(D) To the board;

(E) To the Division of Children and Family Services of the Department of Human Services, including child welfare agency licensing specialists;

(F) To law enforcement or the prosecuting attorney upon request;

(G) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; or

(H)(i) To individual federal and state representatives and senators and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services.

(I) To the attorney ad litem and court-appointed special advocate, the home study on the adoptive family selected by the department to adopt the juvenile.

(3)(A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

(B) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(i) Foster parents approved by a child placement agency licensed by the Department of Human Services shall not be liable for damages caused by their foster children nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

History. Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4.

**Publisher notes**

A.C.R.C. Notes. Acts 2005, No. 888, § 1, provided: "Child welfare agencies operating as residential facilities providing treatment to children with co-occurring substance abuse and psychiatric disorders are covered by the amendment of Arkansas Code §§ 9-28-407(a) and Arkansas Code § 20-8-107(c) by Act 1285 of 2003 so long as they were providing such care on or before March 1, 2003, and also meet the requirements of this act."

Amendments. The 1999 amendment rewrote (a).

The 2001 amendment by No. 1211 redesignated former (h) as present (h)(1); in present (h)(1), inserted "including both foster care and protective services records" and made related changes, and added "to the extent permitted by federal law and only" to the end; redesignated former (h)(1) as present (h)(1)(A); redesignated former (h)(2) as present (h)(1)(B), added "For adoptive placements" to the beginning and made related changes; redesignated former (h)(3) as present (h)(1)(C) and made minor punctuation changes; and added (h)(1) through (h)(3).

The 2001 amendment by No. 1800 redesignated former (a)(3)(1) and (a)(3)(2) as present (a)(3)(A) and (a)(3)(B); and in present (a)(3)(B), inserted "Permit" twice.

The 2003 amendment by No. 1157 added (h)(1)(D)(iii); in (h)(1)(S)(i), inserted "and their staff members"; added (h)(1)(T); in (h)(2)(E), substituted "Children and Family Services of the Department of Human Services" for "Youth Services"; and added (2)(G) and (2)(H).

The 2003 amendment by No. 1166 substituted "circuit" for "juvenile" in (h)(1)(O).

The 2003 amendment by No. 1285, in (a)(3), substituted "March 1, 2003" for "1999" and deleted "the requirements of law" from the end; in (a)(3)(B), inserted "to operate at the capacity licensed by the board as of March 1, 2003; and"; added (a)(3)(C) and (a)(4); and made minor stylistic changes.

The 2005 amendment by No. 888 added present (a)(5).

The 2005 amendment by No. 1766 added (h)(2)(I) and made related changes.

The 2005 amendment by No. 2234 deleted "(8)" following "§ 20-10-101" in (a)(2); in (a)(3), inserted "capacity" and "whether held by the original license or by a successor in interest to the original licensee"; in (b), inserted the subdivision designations and substituted "from licensure under this subchapter" for "therefrom" in present (b)(1); inserted the subdivision designations in (c); substituted "division" for "Division of Medical Services" throughout (c) and (d); in (d), inserted the (1) and (2) designations; redesignated former (d)(1)-(5) as present (d)(2)(A)-(E); and, in present (d)(2), substituted "shall" for "must"; and rewrote (f).

## Research references

### RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 UALR L.J. 483.

§ 9-28-408. Church-related exemption.

## Statutes

(a) Any church or group of churches exempt from the state income tax levied by § 26-51-101 et seq. when operating a child welfare agency shall be exempt from

obtaining a license to operate the facility by the receipt by the Child Welfare Agency Review Board of written request therefor, together with the written verifications required in subsection (b) of this section. A written request shall be made by those churches desiring exemption to the board, which is mandated under the authority of this subchapter to license all child welfare agencies.

(b)(1) In order to maintain an exempt status, the child welfare agency shall state every two (2) years in written form signed by the persons in charge that the agency has met the fire, safety, and health inspections and is in substantial compliance with published standards that similar nonexempt child welfare agencies are required to meet.

(2) Visits to review and advise exempt agencies shall be made as deemed necessary by the board to verify and maintain substantial compliance with all published standards for nonexempt agencies.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child are not endangered.

(c)(1) Any questions of substantial compliance with the published standards shall be reviewed by the board.

(2) Final administrative actions of the board shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) As used in this section, the term "substantial compliance" and the term "is being operated in accordance with this subchapter" shall each mean that a church-operated exempt or a nonexempt child welfare agency is being operated within the minimum requirements for substantial compliance as promulgated by the board. It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child welfare agencies.

History. Acts 1997, No. 1041, § 8.

§ 9-28-409. Criminal record and child maltreatment checks.

Statute text

(a)(1) Each of the following persons in a child welfare agency shall be checked with the child maltreatment central registry in his or her state of residence and any state of residence in which the person has lived for the past six (6) years and in the person's state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all household members age ten (10) years and older;



(D) An adoptive parent and all household members age ten (10) years and older;

(E) An owner having direct and unsupervised contact with children; and

(F) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) The board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures which would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency who has lived in Arkansas continuously for six (6) years or more shall be checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members age sixteen (16) years and older;

(D) An owner having direct and unsupervised contact with children; and

(E) A member of the agency's board of directors having direct and unsupervised contact with children.

(2)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that Department of Arkansas State Police criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(3) All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check every five (5) years, except that adoptive parents shall not repeat the check after court issuance of a final decree of adoption in the adoption case for which the check was obtained.

(4) Adoptive parents shall complete background checks as required by law.

(c)(1) In compliance with federal law and regulations and with policy and procedures promulgated by the board, each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past six (6) years shall be checked with the Federal Bureau of Investigation for convictions of the offenses listed in this subchapter:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all family members age sixteen (16) years and older;
- (D) An owner having direct and unsupervised contact with children; and
- (E) A member of the agency's board of directors having direct and unsupervised contact with children.

(2)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the Department of Health and Human Services and shall sign the form that contains the following under oath before a notary public:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not been convicted of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check which indicates that the subject of the check has been convicted of, or is under pending indictment for, a crime listed in this subchapter; and

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau for processing within ten (10) days of hiring the employee, who shall remain under conditional employment until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the board from denying a license or exemption to an owner or preventing an operator or

employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Department of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of three (3) attempts by qualified law enforcement personnel, the board shall determine eligibility based upon a name check by the Department of Arkansas State Police and the Federal Bureau of Investigation.

(5)(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of central registry and criminal records check.

(B)(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)(1) Except as provided in subdivisions (d)(2) or (h)(1) of this section, no person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section shall be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to, or has been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court unless the conviction was vacated or reversed:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Manslaughter as prohibited in § 5-10-104;

(D) Negligent homicide as prohibited in § 5-10-105;

(E) Kidnapping as prohibited in § 5-11-102;

(F) False imprisonment in the first degree and false imprisonment in the second degree as prohibited in §§ 5-11-103 and 5-11-104;

(G) Permanent detention or restraint as prohibited in § 5-11-106;

(H) Battery in the first degree, battery in the second degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;

(I) Aggravated assault as prohibited in § 5-13-204;

(J) Assault in the first degree and assault in the second degree as prohibited in §§ 5-13-205 and 5-13-206;

(K) Terroristic threatening in the first degree and terroristic threatening in the second degree as prohibited in § 5-13-301(a) and (b);

(L) Any sexual offense as prohibited in § 5-14-101 et seq.;

(M) Permitting abuse of a child as prohibited in § 5-27-221;

(N) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-203 and 5-27-204;

(O) Contributing to the delinquency of a minor as prohibited in § 5-27-205;

(P) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, use of a child or consent to use of a child in sexual performance, and producing, directing, or promoting sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

(Q) Incest as prohibited in § 5-26-202;

(R) Interference with visitation as prohibited in § 5-26-501;

(S) Interference with custody as prohibited in § 5-26-502;

(T) Engaging in conduct with respect to controlled substances as prohibited in § 5-64-401;

(U) Distribution to minors as prohibited in § 5-64-406;

(V) Public display of obscenity as prohibited in § 5-68-205;

(W) Prostitution as prohibited in § 5-70-102;

(X) Promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting prostitution in the third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

(Y) Computer child pornography as prohibited in § 5-27-603;

(Z) Computer exploitation of a child in the first degree as prohibited in § 5-27-605(a);

(AA) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this section;

(BB) Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude; and

(CC) Any former or future law of this or any other state or of the federal government which is substantially equivalent to one (1) of the aforementioned offenses.

(2)(A) Any person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be absolutely disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency during the period of his or her confinement, probation, or parole supervision.

(B) Except as provided in subdivision (h)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency after the completion of his or

her term of confinement, probation, or parole supervision. This presumption can be rebutted in the following manner:

(i)(a) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person.

(b) The applicant shall bear the burden of making such a showing; and

(ii) The board in its discretion may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having been convicted of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility. In making this determination, the board shall consider the following factors:

(a) The nature and severity of the crime;

(b) The consequences of the crime;

(c) The number and frequency of crimes;

(d) The relation between the crime and the health, safety, and welfare of any person, such as:

(1) The age and vulnerability of victims of the crime;

(2) The harm suffered by the victim; and

(3) The similarity between the victim and persons served by a child welfare agency;

(e) The time elapsed without a repeat of the same or similar event;

(f) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(g) Any other information that bears on the applicant's ability to care for children or any other relevant information.

(C) The board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action and shall not be subject to review.

(f)(1) No foster child in the custody of the Department of Health and Human Services shall be placed in the home of any foster or adoptive parent if the criminal records check reveals a felony conviction for:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) A crime against children, including child pornography; or

(D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(2) No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal records check reveals a felony conviction of an adult in the home for:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) A crime against children, including child pornography; or

(D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(g)(1) No foster child in the custody of the Department of Health and Human Services shall be placed in the home of any foster or adoptive parent if the criminal record check reveals a felony conviction for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

(2) No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal record check reveals a felony conviction of any adult in the home for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

(h)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subdivision (e)(1) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (h)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree and second degree as prohibited in §§ 5-14-124 and 5-14-125;

(F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree as prohibited in §§ 5-27-203 and 5-27-204;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1.

#### Publisher notes

Amendments. The 1999 amendment added (f) and (g).

The 2001 amendment rewrote the section.

The 2003 amendment added present (e)(1)(Y) and (e)(1)(Z) and redesignated former (e)(1)(Y) through (e)(1)(AA) as present (e)(1)(AA) through (e)(1)(CC).

The 2005 amendment by No. 1766, in (e)(1), substituted "subdivisions (d)(2) or (h)(1)" for "subdivision (d)(2)" and inserted "unless the conviction was vacated or reversed"; substituted "degree" for "degrees" in (e)(1)(F); inserted "unless the conviction is vacated or reversed" in (e)(2)(A); in (e)(2)(B), inserted "Except as provided in subdivision (h)(1) of this section," and "unless the conviction is

vacated or reversed"; inserted the (e)(2)(B)(i)(a) and (b) and (e)(2)(B)(ii) designations; deleted "served by the facility and is therefore qualified to serve in a child welfare agency" in present (e)(2)(B)(i)(a); substituted "to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency" for "to serve in a child welfare agency" in (e)(2)(B)(ii); substituted "any person" for "persons served by a child welfare agency" in (e)(2)(B)(ii)(d); added "and" at the end of (e)(2)(B)(ii)(d)(2); substituted "from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under" for "serving in a child welfare agency pursuant to" in (e)(2)(C); and added (h).

The 2005 amendment by No. 1923 substituted "subdivisions (d)(2) or (h)(1)" for "subdivision (d)(2)" in (e)(1); added "and" at the end of (e)(1)(BB); inserted "Except as provided in subdivision (h)(1) of this section" in (e)(2)(B); and added (h).

U.S. Code. Pub. L. 92-544, referred to in this section, is Act Oct. 25, 1972, 86 Stat. 1109. See 42 U.S.C. § 5119a.

Research references

## RESEARCH REFERENCES

UALR L.J.

Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 UALR L.J. 361.